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State Actions: Health Insurance Exchanges

The 2010 Affordable Care Act (ACA) gives states the option to establish one or more state or regional exchange, partner with the federal government to run the exchange, or to merge with other state exchanges. If a state chooses not to create an exchange, the federal government will set up the exchange(s) in the state. Exchanges are, for most states, new entities that will function as a marketplace for buyers of health insurance, giving them choices for health coverage. They will offer a variety of certified health plans and provide information and educational services to help consumers understand their options.

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Health Exchange Establishment Legislation

August 2011



- Introduced Legislation Pending for 2011 Session
- Did not Pass in 2011
- Enacted Exchange Establishment
- No 2011 Legislative Action to Establish an Exchange

* Indicates that it is a 2011-2012 carry over state and the bill can be reintroduced in the 2012 legislative session

** California is the only state to pass exchange establishment in 2010.

In addition, the following are separate NCSL reports on closely-related policy areas affecting health insurance policy:

"2011 Health Insurance Reform Enacted State Laws Related to the Affordable Care Act" - The 2010 federal Affordable Care Act establishes a series of "early market reforms" - uniform, 50-state requirements and additional options that build on existing state regulation of health insurance policies.

"Challenging and Alternatives" legislation, opposing health reform, also affects health insurance policy. This approach is described in a separate NCSL online report, but is not included in this report on laws.

NCSL database users can obtain a single list that combines both groups of bills.

Summary of 2011 State Legislative Action

As of August 17, 2011

Enacted Exchange Established in 2010 or 2011 --13 States	Did not Pass in 2011-- 16 States	Pending--5 States + D.C.
California**, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, North Dakota, Oregon, Vermont, Virginia, Washington, West Virginia	Alabama, Alaska*, Arizona, Arkansas, Georgia, Indiana, Iowa*, Maine*, Minnesota*, Missouri, Montana, New Hampshire*, New Mexico, Oklahoma*, Rhode Island*, South Carolina*, Texas	District of Columbia, Michigan, New Jersey, New York, North Carolina, Pennsylvania

Source: NCSL Legislative Tracking Database, 2011

*Indicates that it is a 2011-2012 carry over state and the bill may be reintroduced in the 2012 legislative session.

** California is the only state to pass exchange establishment in 2010.

Massachusetts and Utah passed laws prior to the enactment of the Affordable Care Act in March 2010. Please see the table below for information on these two states.

Exchange Establishment Laws

Compiled using NCSL's Federal Health Reform: 2011 State Legislative Tracking Database, powered by StateNet.

STATE	STRUCTURE ¹	GOVERNANCE ²	SELECTION OF CARRIERS ³	HIGHLIGHTS OF EXCHANGE ⁴	FEDERAL GRANTS AWARDED FOR EXCHANGES ⁵
Alabama Executive Order 17	Governor Robert Bentley created Executive Order 17 on June 2, 2011 to establish the Alabama Health Insurance Exchange Study Commission. The Commission is to study the establishment of the Alabama Health Benefits Exchange and make recommendations to the Governor and Legislature by December 1, 2011. These recommendations are to include the form, governance, resource allocation, function and potential effects of the Exchange. Legislation within the 2012 Regular Session will then consider these recommendations with regards to the creation, governance and implementation of the Alabama Exchange.				<ul style="list-style-type: none"> \$1 million Planning Grant
Arkansas	Governor Mike Beebe has directed the Arkansas Insurance Department (AID) to lead planning efforts for the establishment of an exchange. The AID received a one year, \$1 million planning grant from the United States Department of Health and Human Services to assist with studying options for the development of an exchange. As part of their efforts, the AID established a Health Benefits Exchange Planning website: http://hbe.arkansas.gov/ .				<ul style="list-style-type: none"> \$1 million Planning Grant
California 2010 SB 900 and AB 1602	Independent State Agency	<p>5 member board</p> <p>The members of the board have been appointed. Click here for California Exchange web page.</p>	Active Purchaser	<p>The board appointed an Executive Director on August 25, 2011. California was the first state to establish state-based exchange under the ACA.</p> <ul style="list-style-type: none"> Conflict of Interest: Members of the board cannot be affiliated with any entity involved in the exchange (carriers, brokers, providers, etc) or benefit financially from the exchange while serving on the board. SHOP and individual exchange are separate, but board has the authority to reevaluate that in 2018. Legislation allows the use of navigators, the board is responsible for defining rules on navigator participation. 	<ul style="list-style-type: none"> \$1 million Planning Grant \$39,421,383 in Level One Establishment Grant The general fund is allowing a \$5 million loan to establish the exchange.
Colorado 2011 SB 200, Chapter No. 246	Non-Profit	<p>12 member board</p> <p>Governor Hickenlooper appointed members on June 29, 2011. Click here for Board of Directors Resource Page.</p>	Not an Active Purchaser	<p>Bi-Partisan legislation</p> <ul style="list-style-type: none"> The bill also creates the Legislative Health Benefit Exchange Implementation Review Committee. Conflict of Interest: Members of the board may not make decisions that benefit them financially. SHOP and Individual Exchange are two separate markets, but the board has the option to review this and merge them if they see fit. Advisory groups can be used to provide recommendations to the board. 	<ul style="list-style-type: none"> \$999,987 Planning Grant The exchange cannot use general funds in establishing or operating the exchange.
Connecticut 2011 SB 921, Public Act 11-53	Quasi-Public Agency	<p>14 member board</p> <p>Membership of the board was announced on August 25, 2011. Click here to visit Connecticut Exchange web site.</p>	Active Purchaser	<ul style="list-style-type: none"> Conflict of Interest: Does not allow any representative of the insurance industry or providers as board members. The Exchange is to submit a plan by January 1, 2012 on whether or not to merge the SHOP and individual exchange, or whether the state should include mandated benefits in addition to the essential health benefits for qualified health plans. The board is also required to address how they will deal with navigators (brokers/agents). 	<ul style="list-style-type: none"> \$996,848 Planning Grant \$6.7 million in Level One Establishment Grant Connecticut was among the consortia of New England states to receive the "Early Innovator" cooperative agreement for a total of \$35,591,333.
Georgia Executive Order	Governor Nathan Deal created an Executive Order on June 2, 2011 to establish the Georgia Health Insurance Exchange Advisory Committee. The Committee is to make preliminary recommendations to the Governor by September 15, 2011 and final recommendations by December 15, 2011. The Executive Order emphasized a desire to "develop an exchange that reflects a free market, conservative approach to expanding health insurance coverage in Georgia". The Committee is composed of legislators, the Commissioner of Insurance, the Commissioner of the Department of Community Health, the Chief Operating Officer of the Department of Economic Development, and others.				<ul style="list-style-type: none"> \$1 million Planning Grant
Hawaii 2011 SB 1348 Act 205	Non-Profit	<p>Interim Board until 15</p> <p>Member board is appointed by July 1, 2012.</p>	The Insurance Commissioner will determine eligibility for plans, but all	<p>The Hawaii Health Connector will work with the Hawaii Prepaid Health Care Act.</p> <ul style="list-style-type: none"> Conflict of Interest: The board will set policies and determine how to handle conflict of interest. Interim board will make recommendations regarding a funding plan 	<ul style="list-style-type: none"> \$1 million Planning Grant Not allowed to use state funds for the operation

State Actions to Implement the Health Benefit Exchange

			plans that apply will be included in the exchange.	(not allowed to use state funds), conflict of interest criteria, board member terms, among other items by the 2012 legislative session.	of the exchange.
Illinois 2011 SB 1555 Public Act 197-0142	This bill is intended to establish a state based health insurance exchange. The act creates an Illinois Health Benefits Exchange Legislative Study Committee to inquire further into the establishment of the Illinois Health Benefits Exchange. The Legislative Study Committee will report its findings to the executive and legislative branches and make recommendations on the governance, structure, operating models and standards of the Exchange. Illinois received \$1 million in Planning Grant and \$5,128,454 in level one Establishment Grant.				
Indiana Executive Order 11-01	Governor Mitchell Daniels, Jr. created Executive Order 11-01 to establish the Indiana Health Benefit Exchange. It names the Indiana Family and Social Services Administration to work with other state agencies to establish and operate an exchange. It establishes the "Indiana Insurance Market" as a nonprofit corporation. Designates the Secretary of the Indiana Family and Social Services Administration to serve as the incorporator of the exchange. Provides for a board of directors and an appropriation analysis.				<ul style="list-style-type: none"> \$1 million Planning Grant \$6.9 in Level One Establishment Grant
Maryland 2011 SB182 (Chapter 1) and 2011 HB 166 (Chapter 2)	Independent State Agency	9 member board Governor O'Malley appointed members on May 26, 2011. Click here to visit the exchange web site.	The board will decide as part of their planning.	<p>The board appointed an Executive Director on August 16, 2011.</p> <ul style="list-style-type: none"> Conflict of Interest: Members of the board cannot be affiliated with any entity involved in the exchange (carriers, brokers, providers, etc) or benefit financially from the exchange while serving on the board. The board will provide recommendations on financial structure, whether or not the SHOP and individual exchange should be merged, and plan participation by December 23, 2011. 	<ul style="list-style-type: none"> \$1 million Planning Grant \$27,186,749 in Level One Establishment Grant Maryland received the "Early Innovator" cooperative agreement. Award Amount: \$6,227,454
Massachusetts Chapter 58 of the Acts of 2006	(Operational) Independent State Agency	11 member board Click here for a complete list of board members.	Active Purchaser	<p>In 2006, Massachusetts passed health reform legislation that required the creation of an exchange.</p> <ul style="list-style-type: none"> The Connector serves many functions and manages two health insurance programs: Commonwealth Care and Commonwealth Choice. Commonwealth Care is a subsidized program for adults who do not have employer-sponsored insurance. Commonwealth Choice offers commercial insurance plans for individuals ineligible for care as well as small business employers. Annual Reports are provided to the Legislature. 	<ul style="list-style-type: none"> A \$25 million appropriation from the state general fund helped start the exchange. \$1 million Planning Grant Massachusetts was among the consortia of New England states to receive the "Early Innovator" cooperative agreement. Administered by the University of Massachusetts Medical School. Award Amount: \$35,591,333
Nevada 2011 SB 440 Chapter No. 439	Independent State Agency	10 member board	The board will determine in its operational plan.	<p>Creates the Silver State Health Insurance Exchange.</p> <ul style="list-style-type: none"> Conflict of Interest: Board member can not be affiliated with insurance carriers or be a legislator. Required to submit annual reports to the Governor and the Legislature. 	<ul style="list-style-type: none"> \$1 million Planning Grant \$4,045,076 Level One Establishment Grant
North Dakota 2011 HB 1126	This bill is intended to establish a state based health insurance exchange. The law requires the exchange to be established no later than January 1, 2013 and operational by January 1, 2014. North Dakota's Insurance Commissioner and the department of human services may adopt rules necessary or desirable to carry out the provisions necessary to establish a health insurance exchange that are stipulated in the law. The commissioner and department of human services must provide a update to legislative management about their progress before October 15, 2012. A special legislative session will likely be called to consider their recommendations and to take further steps to implement the health benefits exchange.				
Oregon 2011 SB 99, Chapter 415	Independent Public Corporation of the State	9 member board	Active Purchaser	<ul style="list-style-type: none"> Conflict of Interest: The board is required to maintain a balance of consumer representation and health insurance experts. No more than two members can be affiliated with an insurer or provider. The board is required to produce a formal business plan and establish implementation policies. The board is required to establish a Consumer Advisory Committee and is allowed to establish other types of advisory committees. 	<ul style="list-style-type: none"> \$1 million Planning Grant Oregon received the "Early Innovator" cooperative agreement administered by

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				The exchange is allowed to enter into contracts with certified navigators.	the Oregon Health Authority Award Amount: \$48,096,307 • \$8,969,600 in Level One Establishment Grant
Rhode Island Executive Order 11-09	Establishes the Rhode Island Health Benefits Exchange as a division within the Executive Department.	13 member board	Active Purchaser	<ul style="list-style-type: none"> Must meet all minimum requirements set by the Affordable Care Act. Conflict of Interest: Board members can not be affiliated with any insurer, agent, broker or provider. Also allows for the establishment of advisory committees. The exchange contracts with carriers and determines which insurers are allowed to participate, given they meet the minimum federal requirements. 	<ul style="list-style-type: none"> \$1 million Planning Grant Rhode Island was among the consortia of New England states to receive the "Early Innovator" cooperative agreement, administered by the University of Massachusetts Medical School Award Amount: \$35,591,333 \$5.2 Million in Level One Establishment Grant
Utah HB 133 of 2008 and HB 189 of 2009	(Operational) Existing Agency-Office of Consumer Health Services	Not a set number, can be up to 9	Not an Active Purchaser, all plans are allowed to participate	<ul style="list-style-type: none"> The Exchange is designed to connect consumers to the information they need to make informed health care choices, and in the case of health insurance, to execute that choice electronically. The small business portion operates a "defined contribution market" where an employer offers a pre-determined level of funding and allows the employee to purchase their coverage using the funds the employer provided. Utah is modifying the exchange system and expanding its internet portal to meet federal requirements for premium tax subsidies and credits and Medicaid and CHIP eligibility. 	<ul style="list-style-type: none"> \$1 million Planning Grant
Vermont 2011 HB 202, Act No. 48	Existing Agency	The Deputy Commissioner of the Department of Health Access	Not an Active Purchaser	<p>The intent of the general assembly is to establish the Vermont health benefit exchange in a manner such that it may become the foundation for Green Mountain Care.</p> <ul style="list-style-type: none"> The department of Vermont health access will establish the Vermont health benefit exchange. The Vermont health benefit exchange will be considered a division within the department of Vermont health access and will be headed by a deputy commissioner. The Vermont health benefit exchange will establish a navigator program to assist individuals and employers in enrolling in a qualified health benefit plan. 	<ul style="list-style-type: none"> \$1 million Planning Grant Vermont was among the consortia of New England states to receive the "Early Innovator" cooperative agreement, administered by the University of Massachusetts Medical School Award Amount: \$35,591,333
Virginia 2011 HB 2434, Chapter No. 823	This bill is intended to establish a state based health insurance exchange. The General Assembly has requested that the Governor, through the Secretary of Health and Human Resources and others, make recommendations regarding a health benefits exchange by the 2012 Session. These recommendations will address, among other things, "the make-up of a governing board for the Virginia Exchange".				
Washington Chapter 317, Laws of 2011 SB 5445	Public/Private Partnership separate from the state	11 member board	Board of Directors will decide	<ul style="list-style-type: none"> Conflict of Interest: The board members must not benefit financially from serving on the exchange while on the board. The board has to develop an implementation report to be presented to the legislature by 2012. The board will decide to whether to establish a SHOP and individual exchange as one or separately. 	<ul style="list-style-type: none"> \$996,285 Planning Grant \$23 million in Level One Establishment Grant
West Virginia 2011 HB 408, Act No. 100	New Entity within the Office of Insurance Commissioner	10 member board	Not an Active Purchaser	<ul style="list-style-type: none"> The individual and SHOP exchange are separate. The board is allowed to assess fees on carriers, including carriers that do not participate in the exchange. Conflict of Interest: Board members are not allowed to receive compensation and must represent various stakeholders as defined in 	<ul style="list-style-type: none"> \$1 million Planning Grant \$9,667,694 in Level One Establishment Grant

State Actions to Implement the Health Benefit Exchange

the law.

¹ Structure refers to where the exchange will be housed in the state.

² Governance refers to the governing board outlined in the law.

³ Selection of Carriers is regarding how a state will operate the exchange. States have options to operate their exchange from an "active purchaser" model in which the exchange operates as large employers often do, using market leverage and the tools of managed competition to negotiate product offerings with the exchange. To the "open marketplace" in which the exchange operates as a clearing house that is open to all qualified insurers and relies on market forces to generate product offerings as is the case in CO and UT. For these states, This means that any insurer that meets the Qualified Health Plans standard can participate in the exchange. On the other hand, a state governing board can participate in selective contracting and pick and choose which insurers are allowed to participate as is the case in CA, MA, and CT.

⁴ Highlights include announcements, unique facts, etc.

⁵ Federal Grants are a part of the Affordable Care Act and are available to states to plan and implement exchanges. State exchanges must be self sufficient by 2015.

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